Council Directive of 27 November 1984 concerning the reciprocal obligations of export credit insurance organizations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organizations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities (84/568/EEC)

COUNCIL DIRECTIVE

of 27 November 1984

concerning the reciprocal obligations of export credit insurance organizations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organizations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities

(84/568/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 113 thereof,

Having regard to the proposal from the Commission,

Whereas insurance and finance for export influence international trade flows and as such constitute a powerful instrument of commercial policy;

Whereas the increasing interdependence of the Member States' economies results in a trend towards the growth of export operations undertaken on a cooperative basis by a number of undertakings in different Member States;

Whereas such cooperation is a major, or even decisive, factor in the competitiveness of Community exports on third-country markets;

Whereas, accordingly, such cooperation should be encouraged, particularly in the field of subcontracting;

Whereas differences between the export guarantee and finance systems at present in force in the Member States may give rise to difficulties in the carrying out of such export operations;

Whereas joint insurance is a form of cooperation between credit insurers of different Member States which allows undertakings in those Member States to cooperate in export operations;

Whereas in consequence it is important to establish and extend the smooth operation of this form of cooperation between credit insurers;

Whereas, finally, the guarantee and finance systems in force in Member States have a direct effect on the working of the common market, and it would appear useful also to apply this form

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of cooperation in the field of intra-Community trade; whereas implementation of the present Directive does not however involve any modification of Member States' legislative provisions, and consultation of the European Parliament is therefore not compulsory,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1 Member States shall ensure that their export credit insurance organizations acting on behalf of the State or with its support, or the public departments acting in place of such organizations, comply with the provisions of the specimen agreement annexed hereto as regards their reciprocal obligations if deciding to grant, jointly with an organization or public department of another Member State, guarantees relating to a contract involving one or more subcontracts in one or more Member States.

2 The annexed provisions shall not preclude the adoption by the organizations or departments referred t6 in paragraph 1 of additional provisions not affecting the scope of the provisions annexed hereto, when applying the latter to any specific operation.

Article 2

The Commission shall, two years after implementation of this Directive, submit a report on the experience gained from the application of the provisions annexed hereto.

The Commission may at any time submit proposals to modify these provisions.

Article 3

Member States shall table the measure necessary to ensure compliance with the provisions of the Annex within six months of notification[(1)] of this Directive.

They shall inform the Commission of these measures.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27 November 1984.

For the Council

The President

P. BARRY

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ANNEX

SPECIMEN AGREEMENT

Article 1

Scope

The object of this Agreement is to regulate the reciprocal obligations of export credit insurers of the European Economic Community in cases where:

— an undertaking (hereinafter called ‘the principal contractor’) subcontracts to one or more undertakings (hereinafter called ‘the subcontractors’) of one or more Member States of the European Economic Community an export contract of which the principal contractor is the sole holder, and which it has concluded with an undertaking (hereinafter called ‘the buyer’) situated:
  — either in a country not belonging to the European Economic Community,
  — or in a Member State of the European Economic Community other than those in which the principal contractor and the subcontractors) are situated;
— the principal contractor has undertaken to remit to the subcontractors) the portion due to the latter out of the sums paid by the buyer to the principal contractor, and to complete any formalities which may be necessary to transfer that portion of the payments made by the buyer which is due to the subcontractor(s);
— there are no legal ties between the subcontractor(s) and the buyer;
— the principal contractor's credit insurer (hereinafter called ‘the principal insurer’) and the credit insurers) of the subcontractor(s) (hereinafter called ‘the joint insurer(s)’) are prepared to guarantee, each according to the usual terms of his policy, the portion of the operation carried out in their respective countries against the risks defined by them in each individual agreement.

The agreement which the abovementioned export credit insurers shall conclude in each individual case relating to the issue of joint guarantees to a principal contractor and to one or more subcontractors shall be governed by the Articles below.

Article 2

Obligations of the principal insurer

The principal insurer, being the sole manager of the risk, including the subcontracted element, shall undertake:

(a) to guarantee the principal contractor, in respect only of the latter's part of the contract, against the risks defined by him in each individual agreement;

(b) not to accept any modification to any of the terms of performance of the contract (amount, delivery, payment, etc.) or to the contract between the principal contractor and the subcontractors) for the performance of that contract, unless mutually agreed with the joint insurers);

(c) not to disclaim liability under the provisions of the policy issued to the principal contractor in consequence of any default on the latter's part, without notifying the joint insurer(s) thereof;